Exhibit 22

FAX

Confidentiality Notice

Department of the Treasury
Internal Revenue Service

Date *7-10-07*

Number of pages including cover sheet *3*

TO: Tom Nath - AT&T

Phone 908-234-8333

Fax Phone 281-664-5301

FROM: *Roy Schwarmann*
Internal Revenue Service

Phone *(973) 898-2633*

Fax Phone *(973) 898 -2671*

REMARKS: ☐ *Urgent* ☒ *For your review* ☐ *Reply ASAP* ☐ *Please Comment*

Letter attached.

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
200 Sheffield St. Mountainside NJ 07092

Large Mid Sized Business Division

Date: July 10, 2007

Jeffrey Tutnauer
AT&T Inc.
One AT&T Way
Room 4A229
Bedminster NJ 07921

Person to Contact:
Roy Schwarmann
Telephone Number:
908-301-2130
Refer Reply To:
LMSB: Exam Group 1349

Dear AT&T Inc.

On 3/19/07 Tom Nath from AT&T provided me with a fax coversheet dated 3/14/07, a letter to the FCC which was date stamped 3/14/07, and a six page letter to the FCC dated 3/16/07. The fax coversheet was prepared by the IRS Taxpayer Service office in Mountainside NJ. Attached to it was the 3/14/07 letter which was signed, "Thank you, IRS". The 3/14/07 letter was addressed to the FCC and requested that they "Resolve all declaratory ruling requests made by petitioners within case 06-210 currently before the FCC".

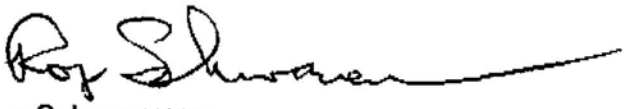
The six page letter to the FCC dated 3/16/07 was written by Al Inga. The first paragraph of that letter stated" On Wednesday March 14th 2007 the IRS issued a Primary Jurisdiction Referral.....that requests that the FCC resolve all Declaratory Rulings".

I contacted my manager in my Mountainside office to speak to the Taxpayer Service employee who had faxed the 3/14/07 letter. The Taxpayer Service employee stated that Al Inga had come into the Mountainside office several times that day and had tried to get her to type his 3/14/07 letter onto IRS letterhead. She refused to do that, but eventually did fax a copy of his letter to 973-787-1050 "on behalf of a taxpayer at the Mountainside POD", as written on the fax coversheet.

The 3/16/07 letter written by Al Inga clearly states that the IRS had issued the 3/14/07 letter. Since I knew that the IRS had not authored the 3/14/07 letter I consulted with my manager and then contacted a Special Agent from Treasury Inspector General for Tax Administration office and referred the matter to him.

I subsequently issued my letter dated 3/23/07 to you which stated that the 3/14/07 letter was not prepared or authorized by the IRS.

Yours truly,



Roy Schwarmann
Team Coordinator
Badge # 22-06247

Exhibit 23

Declaration of Richard J. Sinton

I, Richard J. Sinton, do hereby declare as follows:

1. I am a General Attorney employed by AT&T Services, Inc. I work principally in the Tax group of the corporate law division. I have been employed by AT&T for 25 years as a tax attorney. My office is located at One AT&T Way, Bedminster, N.J. 07921.

2. I am providing this Declaration to inform the Federal Communications Commission ("FCC") of AT&T Corp.'s contact and communications with the Internal Revenue Service ("IRS") regarding the March 14, 2007 letter that was faxed from the IRS's Mountainside, N.J., office and submitted in this proceeding. I have personal knowledge of the facts stated in this Declaration. I understand that this Declaration will be provided to the FCC in support of AT&T's response to Petitioners' Opposition to AT&T's Motion for Sanctions and opposition to Petitioners' Motion for Sanctions against AT&T.

3. After receiving a copy of the March 14, 2007 letter, and noting that it did not conform to correspondence I typically see from the IRS, I instructed Tom Nath, a tax director at AT&T Services, to provide the letter, the accompanying fax cover page and the March 16th Ex Parte comments concerning the March 14 letter to Mr. Roy Schwarmann, the IRS auditor working on AT&T's income tax review. On March 19, 2007, Mr. Nath sent these materials to Mr. Schwarmann and asked if he would review them and provide us with an opinion concerning their authenticity. We requested Mr. Schwarmann's views because he works out of the Mountainside, N.J., IRS office from which the letter was faxed.

4. On March 23, 2007, Mr. Schwarmann sent a letter to Mr. Jeffrey Tutnauer of AT&T stating that the March 14, 2007 letter was not "prepared or authorized" by the IRS. Mr.

Schwarmann's letter also stated that the March 14th letter was sent on behalf of a taxpayer who walked into the Mountainside, N.J., IRS Taxpayer Service Office.

5. No one from AT&T requested an investigation into the March 14, 2007 letter beyond asking for Mr. Schwarmann's review of the letter. AT&T simply provided the materials described above to Mr. Schwarmann and asked for his views concerning the March 14, 2007 letter. As I came to understand, Mr. Schwarmann independently referred the matter to the Inspector General's office within the Treasury Department and that the case was assigned to Treasury Agent Koles.

6. On March 19, 2007, Treasury Agent Koles contacted me to obtain Ms. Deena Shetler's phone number. On March 23, 2007, I had another conversation with Agent Koles to inquire whether he needed any further information from AT&T. During this conversation, Agent Koles informed me that he did not require anything further from AT&T and that he could not discuss the matter or his investigation beyond stating that he was investigating the events surrounding the March 14th letter and that if he discovered wrongdoing he would forward the case to the United States Attorney's office.

7. The initial request from Mr. Schwarmann and my two conversations with Agent Koles comprised the full extent of AT&T's contact with the IRS and Treasury Department concerning the March 14, 2007 letter prior to receipt of the June 29, 2007 opposition to AT&T's motion for sanctions.

8. AT&T has not contacted anyone from the Taxpayer Advocate Service regarding the March 14th letter or the subsequent letter from the Taxpayer Advocate Service filed with the FCC on April 4, 2007.

9. At no time did AT&T lobby the IRS or the Treasury Department to conduct or carry out an investigation concerning the March 14th letter or the April 4, 2007 letter from the Taxpayer Advocate Service. Nor did anyone from AT&T assert or suggest to any IRS or Treasury Department agent or employee that Mr. Inga had a relationship with IRS or Treasury Department personnel, had obtained favors from IRS or Treasury Department personnel, had paid IRS or Treasury Department personnel to send the March 14, 2007 letter, or had engaged in any other wrongdoing. AT&T did not assert or suggest to the IRS or Treasury Department that the Taxpayer Advocate had not verified that a tax reward claim was active.

10. AT&T has never been informed by the IRS or Treasury Department of the results of the investigation Mr. Schwarmann precipitated. AT&T has received only Mr. Schwarmann's letters of March 23, 2007 and July 10, 2007. Agent Koles made clear that AT&T would not be informed further of any investigation. I had a subsequent discussion with Agent Koles and was told on July 12, 2007 that his organization does not discuss their investigations or the results of their investigations of this type with third parties.

11. AT&T is unaware of a current investigation by the IRS or Florida Department of Revenue into whether AT&T owes taxes on shortfall and termination charges made to aggregators.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of July, 2007, at Bedminster, New Jersey.

Richard J. Sinton

Exhibit 24

Declaration of Jeffrey Tutnauer

I, Jeffrey Tutnauer, do hereby declare as follows:

1. I am Vice President – Property Tax, External Tax Policy & Bedminster Operations for AT&T Services, Inc. I have been employed by AT&T for 23 years as a tax professional. I was the tax Vice President with oversight of the AT&T Federal Income Tax Audit for the tax years 2002 – 2004 and as such, was the official contact for the IRS for matters relating to AT&T Corp. My office is located at One AT&T Way, Bedminster, N.J. 07921.

2. I am providing this Declaration to inform the Federal Communications Commission ("FCC") of AT&T Corp.'s contact and communications with the Internal Revenue Service ("IRS") regarding the March 14, 2007 letter that was faxed from the IRS's Mountainside, N.J., office and submitted in this proceeding. I have personal knowledge of the facts stated in this Declaration. I understand that this Declaration will be provided to the FCC in support of AT&T's response to Petitioners' Opposition to AT&T's Motion for Sanctions and opposition to Petitioners' Motion for Sanctions against AT&T.

3. On March 23, 2007, Mr. Schwarmann sent me a letter stating that the March 14, 2007 letter was not "prepared or authorized" by the IRS. Mr. Schwarmann's letter also stated that the March 14th letter was sent on behalf of a taxpayer who walked into the Mountainside, N.J., IRS Taxpayer Service Office. I understood that Mr. Thomas Nath of the AT&T tax organization had made the inquiry to which Mr. Schwarmann's letter was a response.

5. No one from AT&T requested an investigation into the March 14, 2007 letter beyond asking for Mr. Schwarmann's review of the letter. Mr. Nath simply provided the March 14th letter and cover letter, as well as the accompanying March 16th Ex-parte comments to Mr. Schwarmann and asked for his views concerning the March 14, 2007 letter. As I understand it,

Mr. Schwarmann independently referred the matter to the Inspector General's office within the Treasury Department and that the case was assigned to Treasury Agent Koles.

6. AT&T has not contacted anyone from the Taxpayer Advocate Service regarding the March 14th letter or the subsequent letter from the Taxpayer Advocate Service filed with the FCC on April 4, 2007.

7. At no time did AT&T lobby the IRS or the Treasury Department to conduct or carry out an investigation concerning the March 14th letter or the April 4, 2007 letter from the Taxpayer Advocate Service. Nor did anyone from AT&T assert or suggest to any IRS or Treasury Department agent or employee that Mr. Inga had a relationship with IRS or Treasury Department personnel, had obtained favors from IRS or Treasury Department personnel, had paid IRS or Treasury Department personnel to send the March 14, 2007 letter, or had engaged in any other wrongdoing. AT&T did not assert or suggest to the IRS or Treasury Department that the Taxpayer Advocate had not verified that a tax reward claim was active.

8. AT&T has never been informed by the IRS or Treasury Department of the results of the investigation that Mr. Schwarmann precipitated. AT&T has received only Mr. Schwarmann's letters of March 23, 2007 and July 10, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of July, 2007, at Bedminster, New Jersey.

Jeffrey Tutnauer

Exhibit 25

Declaration of Thomas E. Nath

I, Thomas E. Nath, do hereby declare as follows:

1. I am a Tax Director employed by AT&T Services, Inc. I work principally in the Federal Tax Audit group to handle AT&T Corp.'s IRS Federal Audits. I have been employed by AT&T for 14 years as a tax professional. My office is located at One AT&T Way, Bedminster, N.J. 07921.

2. I am providing this Declaration to inform the Federal Communications Commission ("FCC") of AT&T Corp.'s contact and communications with the Internal Revenue Service ("IRS") regarding the March 14, 2007 letter that was faxed from the IRS's Mountainside, N.J., office and submitted in this proceeding. I have personal knowledge of the facts stated in this Declaration. I understand that this Declaration will be provided to the FCC in support of AT&T's response to Petitioners' Opposition to AT&T's Motion for Sanctions and opposition to Petitioners' Motion for Sanctions against AT&T.

3. After receiving a copy of the March 14, 2007 letter from Richard J. Sinton, an AT&T tax attorney, and noting that it did not conform to the typical IRS correspondence, I provided the letter with the accompanying fax cover page and the March 16th Ex Parte comments concerning the March 14 letter to Mr. Roy Schwarmann, the IRS Team Coordinator of AT&T's 2002 – 2004 income tax audit. On March 19, 2007, I asked Mr. Schwarmann if he would review them and provide us with an opinion concerning their authenticity. We requested Mr. Schwarmann's views because he works out of the Mountainside, N.J., IRS office from which the letter was faxed.

4. On March 23, 2007, Mr. Schwarmann sent a letter to Mr. Jeffrey Tutnauer of AT&T stating that the March 14, 2007 letter was not "prepared or authorized" by the IRS. Mr.

Schwarmann's letter also stated that the March 14th letter was sent on behalf of a taxpayer who walked into the Mountainside, N.J., IRS Taxpayer Service Office.

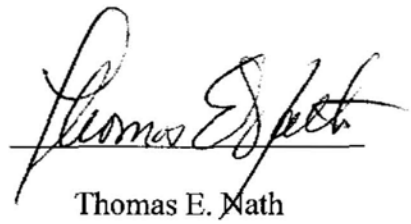
5. No one from AT&T requested an investigation into the March 14, 2007 letter beyond asking for Mr. Schwarmann's review of the letter. AT&T simply provided the materials described above to Mr. Schwarmann and asked for his views concerning the March 14, 2007 letter. As I understand it, Mr. Schwarmann independently referred the matter to the Inspector General's office within the Treasury Department and that the case was assigned to Treasury Agent Koles.

6. AT&T has not contacted anyone from the Taxpayer Advocate Service regarding the March 14th letter or the subsequent letter from the Taxpayer Advocate Service filed with the FCC on April 4, 2007.

7. At no time did AT&T lobby the IRS or the Treasury Department to conduct or carry out an investigation concerning the March 14th letter or the April 4, 2007 letter from the Taxpayer Advocate Service. Nor did anyone from AT&T assert or suggest to any IRS or Treasury Department agent or employee that Mr. Inga had a relationship with IRS or Treasury Department personnel, had obtained favors from IRS or Treasury Department personnel, had paid IRS or Treasury Department personnel to send the March 14, 2007 letter, or had engaged in any other wrongdoing. AT&T did not assert or suggest to the IRS or Treasury Department that the Taxpayer Advocate had not verified that a tax reward claim was active.

8. AT&T has never been informed by the IRS or Treasury Department of the results of the investigation Mr. Schwarmann precipitated. AT&T has received only Mr. Schwarmann's letters of March 23, 2007 and July 10, 2007.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 13th day of July, 2007, at Bedminster, New Jersey.



Thomas E. Nath

Exhibit 26

From: Mr. Inga [mailto:freerecdeptsrvc@optonline.net]
Sent: Sunday, July 15, 2007 8:43 PM
To: Deena Shetler; fcc@bcpiweb.com; lgsjr@usa.net; phillo@giantpackage.com; Joe Kearney; Guerra, Joseph R.; adllc@aol.com
Subject: Deena:Case 06-210 CCI et al vs AT&T Regarding Mr Kearney's motions...

Deena

Petitioners and Tips have read the two motions submitted by Mr Kearney. While Mr Kearney's motions again delays the case Petitioners and Tips fully support Mr Kearney's 2 motions.

Based upon these motions and the fact that Petitioners and Tips president will be away from its office next week Petitioners and Tips respectfully request the Commission to proceed in the following time table:

Mr Kearney is asking for two issues to be decided prior to AT&T filing on July 18th 2007.

1) AT&T should **not** be able to comment on the IRS issues in its next comments as they were issued by the IRS on behalf of Tips, a separate corporation, not a petitioner corporation, and Tips corporation is clearly **not** a party in case 06-210. The FCC obviously needs to rule on this aspect of Mr Kearney's motion before AT&T files.

2) Mr Kearney who is an ex AT&T sales manager and has stated that all of AT&T's Transfer of Service Agreement (TSA) transfers are all stored in AT&T achieves and AT&T is on record asserting to Judge Politan that AT&T has done thousands of "traffic only" transfers. Mr Kearney thus seeks for the FCC to compel AT&T to provide evidence supporting AT&T's position that it has always mandated that revenue commitments transfer on "traffic only" transfers.

Additionally, CCI's president Mr Shipp has just informed me that when the FCC was notified that CCI and AT&T settled in July 1997, but the Inga petitioners did not, the FCC issued an Order that CCI and AT&T **maintain all of its records**. So this would also indicate that AT&T has these records and the FCC had contemplated that examination of these records would eventually resolve the remaining petitioner's case.

The FCC obviously needs to issue an order on this aspect of Mr Kearney's request as well, to decide if AT&T should submit the evidence it claims it has to support its "post 2005" interpretation for 2.1.8.

Petitioners would also like to see the evidence and given the fact that petitioners president will be on out of office from July 22nd through 30th, the FCC should issue an Order allowing AT&T to

have until July 30th 2007 to submit its evidence instead of filing by AT&T's initially requested filing date of July 18th 2007. The extension of the filing time will give AT&T additional time to research its achieves.

Respectfully submitted,

Al Inga Pres
Petitioner's
Tips

Exhibit 27

From: Mr. Inga [mailto:freerecdeptsrvc@optonline.net]
Sent: Monday, July 09, 2007 4:55 PM
To: Guerra, Joseph R.; Deena Shetler; Larry G Shipp Jr.; Phil Okin; adllc@aol.com; Joseph Kearney; Brown, Richard
Subject: Fw: Timing of AT&T Filing

Dear Deena

Petitioner's, Tips and possibly (Mr Kearney, Mr Shipp and Mr Okin) would like the chance to further respond to AT&T's July 18th 2007 filing if the FCC lets AT&T file on this date.

I will be away from July 22nd through the 29th and may need a couple of weeks to respond to AT&T. Therefore petitioner's and Tips request that the FCC wait for a response to AT&T by August 15th 2007 if the FCC allows AT&T to this filing date.

Given the fact that these are permit but disclose proceedings AT&T should normally be allowed to respond. However AT&T was already conceded that it filed based upon its "presumptions" and nothing can possibly change that.

Nothing will change the fact that either AT&T:
A) filed after the IRS already informed AT&T that the AT&T initiated IRS investigation was found baseless
OR
B) if AT&T was not already informed of the outcome by the IRS by AT&T's 6/18 filing date, AT&T was more than obligated to wait for the IRS outcome, having initiated the IRS investigation itself.

No additional AT&T filing can possibly change these facts. Petitioner's and Tips believe AT&T should have to justify its filing now and then based upon its excuse the FCC can decide whether it wishes to wait for AT&T's response.

Additionally AT&T can not possibly repair the short quote and spin of Judge Politan's order which pertained to Tr.8179.---- not AT&T's connotation of transferring S&T obligations on a "traffic only" transfer.

Additionally AT&T's attempt to repair its counsel Mr Whitmer was pathetic, as Mr Whitmer agreed with fellow AT&T counsel Richard Meade's interpretation of 2.1.8., located in the Meade certification at paragraph 15 exhibit N of petitioner's 9/27/06 filing.

All the FCC is going to get from AT&T is more of the same nonsense it conjured up on

June 18th 2007 which will further delay justice.

At this point AT&T can not make-up for its frivolous 6/18/07 filing which is deserving of sanctions. AT&T should have to give the Commission NOW some justification why the FCC should wait.

AL Inga
Petitioner's
Tips

Exhibit 28

ARLEO & DONOHUE, L.L.C.
ATTORNEYS AT LAW

Frank P. Arleo
Timothy M. Donohue

Dawn M. Donohue

622 Eagle Rock Avenue
Penn Federal Building
West Orange, NJ 07052
Telephone: (973) 736-8660
Fax: (973) 736-1712

June 27, 2005

Honorable William G. Bassler, U.S.D.J.
United States District Court
M.L. King, Jr. Fed. Bldg. & Courthouse
Room 5060
50 Walnut Street
Newark, New Jersey 07102

Re: Combined Companies, Inc., et al. v. AT&T
Civil Action No. 95-908

Dear Judge Bassler:

INTRODUCTION

As Your Honor is aware, this law firm represents plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. in this matter. Plaintiffs' motion to lift the stay imposed by this Court 10 years ago will be heard on a date and time to be set by the Court. In their moving papers, plaintiffs established that the stay must be lifted because (1) the D.C. Circuit has conclusively answered the sole question referred by the Third Circuit several years ago; and (2) all other questions of interpretation concerning the subject tariff have been resolved by the FCC and it is senseless to request it to make the same determinations again.

In opposing plaintiffs' motion, AT&T, has filed a submission that is both factually and legally incorrect. AT&T has submitted 100 pages of exhibits in an attempt to muddy the waters and further delay this matter. However, the time for delay is over. The rulings of the Third Circuit, FCC and D.C. Circuit make clear that plaintiffs' attempted transfer of traffic only under AT&T's tariff

was proper and AT&T's failure to make the transfer is a violation of § 203(c) of the Communications Act. No further rulings are needed by the FCC.

AT&T'S PRELIMINARY STATEMENT AND BACKGROUND FACTS

1. AT&T's Preliminary Statement

AT&T makes numerous factual assertions that are unsupported by any evidence, belied by AT&T's prior conduct and are simply incorrect. Happily, each misstatement is easily refuted. AT&T's assertions will be addressed seriatim.

Beginning with AT&T's Preliminary Statement, AT&T makes the bold statement that the D.C. Circuit Court has rejected the primary claim of the Inga Companies and has strongly suggested that the remaining theories are "meritless." Def. Brf. ("DB") at p. 1. The assertion is false. Plaintiffs' primary claim always has been that its attempted traffic transfer was properly done in accordance with § 2.1.8. Plaintiffs have demonstrated that they even used AT&T's required TSA forms in making the transfer request.[1] By ruling that the traffic transfers were permissible under § 2.1.8, the D.C. Circuit has wholly endorsed plaintiffs' position. Thus, plaintiffs went from an FCC decision holding that its transaction was not prohibited to a D.C. decision that the transaction was expressly permissible.

Also, contrary to AT&T's assertion, there is no suggestion anywhere in the D.C. Circuit's opinion that plaintiffs' remaining theories are "meritless." Id. at 1. In fact, the D.C. Circuit indicated that it was only ruling on the narrow question as to whether § 2.1.8 permitted the transfer.

---

[1] Before the D.C. Circuit, AT&T conceded as much. AT&T's brief stated CCI's use of "Transfer of Services Agreement" forms to request the pertinent movement of traffic conclusively established that Section 2.1.8 applied to their request. Arleo Supp. Cert at Ex. A. At oral argument, AT&T's counsel stated: "No, but the transfer form happens here to **say exactly what the tariff says**, and the only way you can **satisfy the tariff** is either use our form or submit in writing something that says exactly what our form says. Id. at Ex. B.

Exhibit 29

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., a Florida corporation, and WINBACK & CONSERVE PROGRAM, INC., ONE STOP FINANCIAL, INC., GROUP DISCOUNTS, INC. and 800 DISCOUNTS, INC., New Jersey corporations, Plaintiffs, v. AT&T Corp., a New York corporation. Defendant.	Civil Action No. 95-908 (WBG) **Return Date: June 30, 2005**

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO LIFT STAY

ARLEO & DONOHUE, L.L.C.
622 Eagle Rock Avenue
Penn Federal Building
West Orange, New Jersey 07052
(973) 736-8660 Fax (973) 736-1712
(FPA 0801)
Attorneys for Plaintiffs, Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc.

On the Brief:
Frank P. Arleo, Esq.

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PRELIMINARY STATEMENT

This law firm recently was retained as counsel for plaintiffs One Stop Financial, Inc., 800 Discounts, Inc., Winback & Conserve Program, Inc., Group Discounts, Inc. in this matter.[1] On behalf of plaintiffs, we respectfully submit this letter brief and Certification of Counsel in support of plaintiffs' motion to lift the stay imposed by this Court in 1996. Oral argument has been scheduled for June 30, 2005 at 10:00 a.m.[2]

This action was stayed in 1996 so that a very narrow issue of interpretation could be decided by the FCC under the doctrine of primary jurisdiction. As will be amply demonstrated herein, that issue has now been conclusively decided by the D.C. Circuit Court of Appeals and all proceedings before the FCC have been concluded. Hence, the stay should be lifted and this matter should proceed in this Court.

[1] Co-plaintiff Combined Companies, Inc. ("CCI") has settled its claims with AT&T and no longer is an active party in this litigation. Thus, all references to "plaintiffs" herein do not include CCI unless otherwise noted.

[2] Plaintiffs' prior counsel previously filed a motion to: (1) establish procedural time frames; and (2) schedule a conference in this matter. This motion is intended to supersede plaintiffs' prior motion.

BACKGROUND/PROCEDURAL HISTORY

1. Plaintiffs' Plans With AT&T

Plaintiffs were aggregators of inbound toll free service also referred to as Wide Area Telephone Service (WATS Service) or Toll Free Traffic, since 1989. Plaintiffs subscribed to AT&T's Customer Specific Term Plan II (CSTPII) which provided a 23% discount. Subscribers to CSTP II also had to subscribe to AT&T's Revenue Volume Pricing Plan (RVPP) which provided an additional discount of approximately 5%. Thus, plaintiffs had a total of 28% discount to share with its end-users.

AT&T continued to bill the end-users directly even though the end-user was under plaintiffs' 28% discount plan. Therefore, when enrolling end-user locations, plaintiffs had to advise AT&T how much of the 28% discount that it wished to give that end-user. Under AT&T's Enhanced Billing Option (EBO), there were four set discount levels of 15%, 17.5%, 20% and 23% provided to the end-user locations. The difference between what plaintiffs gave to the end-user and 28% would be the compensation paid by AT&T to the aggregator. For example, on all end-users who were given a 20% discount plaintiffs would make 8% of the end-users' phone bill traffic. Obviously, plaintiffs' market was comprised of only those companies that were small users of toll free service who would not be able to receive as much of a discount as plaintiffs were able to provide.

In a cottage industry comprised of roughly 100 competitors, plaintiffs were by far the largest aggregator in the county, controlling over 25% of the entire industry traffic under toll free aggregation. Unfortunately, this made plaintiffs a constant target of AT&T who resisted at every step the FCC mandate that AT&T's discount plans be made available for aggregators' resale.

The FCC sought to allow aggregation of AT&T's discount plans to create competition for the public's benefit.

During late 1993 and 1994, plaintiffs witnessed the emergence of several major competitors, one of which was Public Service Enterprises (PSE). PSE obtained a discount plan called Contract Tariff 516 (CT 516), which was essentially a CSTPII/RVPP plan of 28% with an extra 38% discount for a total discount of 66%. Under the CT516 plan, the end-user would receive a 28% discount and the CT516 owner would receive the 38% difference directly from AT&T to equal 66%. There were no different discount billing options under the CT-516 as with the CSTP/RVPP plan. The end-user locations received the 23% CSTPII discount and the 5% RVPP discount (28% total) and the aggregator got a supplemental compensation of another 38%. With the competitors offering their end-users 28% which was 5% more than the top 23% that plaintiffs could offer, plaintiffs simply could not compete. Additionally, the competitors were able to provide substantially more compensation to their sales people. Given the fact that AT&T still did the billing and it was the same AT&T network transmission facilities that were being utilized, plaintiffs simply could not keep its end-users or its independent contractor sales people from moving to a competitor.

2. <u>The Attempted Transfer</u>

Although plaintiffs qualified for their own CT, AT&T refused to provide plaintiffs with a Contract Tariff despite numerous written and verbal requests. In the fall of 1994, co-plaintiff Combined Companies Inc, (CCI) and plaintiffs entered into an agreement in anticipation of getting their own Contract Tariff (CT), as CCI had advised plaintiffs that it was very close to getting a CT that was competitive with CT 516. The agreement between plaintiffs and CCI states that the end-user traffic would be owned 20% by CCI and 80% by plaintiffs, and would

temporarily be moved to PSE's CT516 66% discount plan while finalizing its own contract tariff with AT&T. Arleo Cert. at Ex. A. When AT&T provided CCI and plaintiffs their own CT, the accounts would be moved back from PSE's CT516 discount plan to the CSTPII/RVPP plan that would have been converted to a new contract tariff. The CCI/PSE agreement states that the end-user traffic was required to be moved back from PSE's CT516 plan within 30 days notice to PSE. Id. at Ex. B.

Plaintiffs/CCI requested the transfer of accounts to PSE in accordance with Section 2.1.8 of AT&T Tariff FCC No. 2. It states:

> *Transfer or Assignment* – WATS, *including* **ANY** associated telephone **number**(s), may be transferred or assigned to a new Customer, provided that:
>
> A. The Customer of record (former Customer) requests in writing that the company transfer or assign WATS to the new Customer.
>
> B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include **(1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).**
>
> C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
>
> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. **These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s).** When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

However, AT&T refused to make the transfer.

3. **Plaintiff's Lawsuit**

In 1995, plaintiffs filed suit against AT&T alleging several violations of the Communications Act, 47 U.S.C. 201, et seq., stemming from AT&T's refusal to transfer: (1) plaintiffs' plans to CCI; and (2) most of the end-user traffic from CCI/plaintiffs to PSE. In May of 1995, this Court ordered the 9 CSTPII/RVPP plans (with all the account traffic on them) transferred from plaintiffs to CCI as per section 2.1.8. Id. at Ex. C. AT&T did not appeal that decision and it is not at issue here. However, Judge Politan questioned the second transfer under the same tariff that would transfer most of the account traffic locations but not the plans, from the 9 CSTP/RVPP 28% plans to the 66% discount plan owned by PSE's CT 516. AT&T represented to Judge Politan that it had filed a proposed tariff change with the FCC (transmittal number 8179) that would answer Judge Politan's concern as to whether account traffic could be transferred without the plan. Under the doctrine of primary jurisdiction, Judge Politan took the matter under advisement, awaiting the FCC decision on transmittal 8179. Id. AT&T delayed seeking a ruling for many months and then withdrew the pending tariff transmittal 8179 after the FCC advised AT&T that it would have prospective effect only. Instead, AT&T replaced the pending tariff with a greatly expanded transmittal number 9229 that AT&T again claimed would answer whether section 2.1.8 allowed traffic transfers without the plan also being transferred. Plaintiffs then moved for reconsideration, arguing that the expanded transmittal still did not answer the question. On reconsideration, Judge Politan found that AT&T's conduct had prejudiced plaintiffs' claim and, as a result, opted to decide the interpretation issue. Judge Politan ruled that the transfer of traffic without the plan was proper and granted a mandatory injunction against AT&T. Id. at Ex. D.

4. The Third Circuit's Ruling

AT&T appealed the District Court's ruling. On May 31, 1996, the Third Circuit entered an Order revoking the preliminary injunction and holding that the FCC had primary jurisdiction on the interpretation of the tariff. It directed the parties to proceed before the FCC on the sole issue of whether under Section 2.1.8 traffic can be transferred without transferring the entire plan. Id. at Ex. E. In response to the Third Circuit's directive, Judge Hedges entered an Order staying the case "until all proceedings before the FCC were concluded."

For the next several years, the matter languished at the FCC. As a result of AT&T's refusal to transfer the traffic or provide a contract tariff, plaintiffs' business was destroyed because customers moved their business to other aggregators who enjoyed greater discounts. Plaintiffs, which were billing as much as $75 million in 1993 lost tens of millions of dollars as a result of AT&T's wrongful refusal to provide a contract tariff or transfer the traffic.

In June of 1996, 18 months after AT&T's denial of the traffic transfer, AT&T initially placed millions of dollars of shortfall and termination penalties directly on plaintiffs' end-users even though the tariff required the penalties to initially be placed on plaintiffs' master compensation account. The infliction of these penalties by AT&T directly against the end-users owned by the plaintiff companies was an illegal remedy and this Court had previously found that the plans were immune from such penalties in any event. This led to the filing in March of 1997 of a Supplemental Complaint in the District Court. In response, AT&T filed a counterclaim against plaintiffs. Those claims also are currently stayed but are not directly at issue in this motion.

5. The AT&T/CCI Settlement

AT&T then entered into a confidential settlement agreement with CCI. Fearing that the settlement could negatively impact plaintiffs' case, plaintiffs sought and successfully compelled AT&T to divulge the settlement agreement with CCI. Pursuant to the agreement, AT&T paid CCI substantial cash, waived its alleged shortfall and termination penalties against CCI, and waived a slamming suit against CCI but not plaintiffs. The settlement agreement required CCI to drop its complaints against AT&T and aid AT&T in its continued defense of the claims asserted by plaintiffs. Thereafter, plaintiffs moved to realign the parties and eliminate CCI as a co-plaintiff. Judge Hedges denied the motion on the grounds that the action was stayed pending completion of the FCC proceedings. Id. at Ex. F.

While waiting for the FCC to rule, this Court held a hearing to determine what, if any, damages were suffered by plaintiffs as a result of the AT&T/CCI settlement. On May 24, 2001, Judge Hayden ruled that plaintiffs' claims against AT&T were not compromised by the AT&T/CCI settlement.

6. The FCC Ruling

The FCC, on October 17, 2003, finally ruled. It held that Section 2.1.8 of AT&T's Tariff FCC No. 2 did not apply to traffic transfers without the plan, but the transfer of traffic could be effectuated under another section. Because AT&T had refused to effectuate the transfer, the FCC found that AT&T was in violation of § 203(c) of the Communications Act. Id. at Ex. G.

7. The D.C. Circuit's Ruling

AT&T appealed the FCC's ruling to the D.C. Circuit Court of Appeals. On January 14, 2005, the D.C. Court of Appeals reversed, ruling that Section 2.1.8 was applicable and permitted an aggregator to transfer traffic without the plan. The Court stated:

> We find the Commission's interpretation implausible on its face. First, the plain language of Section 2.1.8 encompasses all transfers of WATS, not just transfers of entire plans. In the absence of any contrary evidence, we find that "traffic" is a type of service covered by the tariff.
>
> * * *
>
> In sum, the FCC clearly erred in ruling that Section 2.1.8 of AT&T Tariff FCC No. 2 does not apply to a transfer of traffic.

Id. at Ex. H, pp. 10-11.

The D.C. Circuit reversed the FCC concerning Section 2.1.8's applicability, thereby leaving plaintiffs in an even more deserving position since they had properly relied on Section 2.1.8 to transfer the traffic. After almost ten years, the issue referred by the Third Circuit in 1996 was finally decided. Section 2.1.8 permitted plaintiffs to transfer the traffic without a transfer of the entire plan. This motion follows.

LEGAL ARGUMENT

THE STAY SHOULD BE LIFTED BECAUSE THE SOLE ISSUE REFERRED TO THE FCC HAS BEEN DECIDED

AT&T does not refute the D.C. Circuit's ruling that 2.1.8 allows traffic transfers without the plan as the D.C. Circuit found. Instead, AT&T argues that the D.C Circuit's decision has left unresolved an issue that must be first resolved by the FCC under the primary jurisdiction doctrine. AT&T's argument is based on the language of the D.C Circuit's opinion which states:

> "We also do not decide precisely which obligations should have been transferred in this case, as this question was neither addressed by the Commission nor adequately presented to us."

Id. at Ex. H., p. 11.

At first blush, it appears that the D.C. Circuit's opinion left open an issue of interpretation for the FCC. However, a closer examination of all of the facts and prior rulings mandates a finding that all issues have been resolved and the stay should be lifted.

Preliminarily, it should be noted that the Third Circuit's opinion makes clear that the **only** issue referred to the FCC was "whether Section 2.1.8 permits an aggregator to transfer traffic under a plan without transferring the plan itself in the same transaction." Id. at Ex. E, p. 3. The D.C. Circuit has conclusively decided that issue in plaintiffs' favor. AT&T did not appeal the D.C. Circuit's decision or seek a rehearing en banc. Further, AT&T has not filed any petitions with the FCC seeking further rulings. Thus, all FCC proceedings have been concluded as per Judge Hedges' stay Order. Id. at Ex. F.

Nevertheless, AT&T has asserted that there exists a remaining issue of interpretation concerning which obligations are transferred when only the traffic is transferred without the plan under Section 2.1.8. AT&T is incorrect. A close reading of the subject tariff (as it existed at the

time of the requested transfer) as well as the FCC's 2003 opinion compels the conclusion that the entire "obligations" issue is nothing more than a red herring aimed at further delaying this case.

The starting point of the analysis is Section 2.1.8, which at the time of the attempted transfer in January 1995, read as follows:

> Transfer or Assignment – WATS, including **ANY** associated telephone **number**(s), may be transferred or assigned to a new Customer, provided that:
>
> A. The Customer of record (former Customer) requests in writing that the company transfer or assign WATS to the new Customer.
>
> B. The new Customer notifies the Company in writing that it agrees to assume all obligations of the former Customer at the time of transfer or assignment. These obligations include **(1) all outstanding indebtedness for the service and (2) the unexpired portion of any applicable minimum payment period(s).**
>
> C. The Company acknowledges the transfer or assignment in writing. The acknowledgement will be made within 15 days of receipt of notification.
>
> The transfer or assignment does not relieve or discharge the former Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment. **These obligations include: (1) all outstanding indebtedness for WATS, and (2) the unexpired portion of any applicable minimum payment period(s).** When a transfer or assignment occurs, a Record Change Only Charge applies (see Record Change Only, Section 3).

First, a plain reading of the tariff makes clear that a new customer accepting traffic must assume two obligations (1) outstanding debt for the service and (2) the unexpired portion of any applicable minimum payment period(s). The first obligation arises if the end-user location does not pay its phone bill to AT&T on time. In that instance, AT&T would debit the RVPP credits to PSE's plan for these charges. The second obligation refers to a time obligation defined elsewhere

in the tariff as one day. Section 2.1.8 also is clear that the transferors remain jointly and severally liable for those two obligations. Plaintiffs have never disputed this interpretation.

Indeed, the Transfer of Service Agreement forms provided for use by AT&T to the aggregators track the language of AT&T Section 2.1.8 verbatim and clearly show that the only two obligations mandated by Section 2.1.8 were indeed assumed by PSE.[3] Id. at Ex. I.

Stated simply, plaintiffs did exactly what AT&T required to satisfy the tariff but AT&T still refused to transfer the account traffic. AT&T wanted PSE to assume not only the only two obligations mandated by Section 2.1.8 and AT&T's own TSA form, but sought to impose two additional obligations concerning shortfall and termination. AT&T is wrong. First, if the tariff seeks to impose additional conditions, it must say so explicitly. 47 C.F.R. § 61.54 (1994); see also 47 C.F.R. § 61.2 (stating that all tariff publications *must contain clear and explicit* explanatory statements regarding rates and regulations). Any ambiguities are construed against the carrier. See Commodity News Services, Inc., v. Western Union, 29 FCC 1208, 1213, aff'd, 29 FCC 1205 (1960).

More importantly, the FCC squarely addressed the question of whether termination obligations were to be assumed by PSE. When faced with AT&T's argument, the FCC stated:

> Although AT&T also argues that the move also avoided the payment of tariffed termination charges, id., it separately states that termination liability (payment of charges that apply if a term plan is discontinued before the end of the term) is not at issue here. Opposition at 3 n.1. That is consistent with the facts of this matter; petitioners never terminated their plans. **Accordingly, termination charges are not at issue in this matter.**"

Id. at Ex. G, p. 8, fn. 56.

[3] In fact, at oral argument before the D.C. Circuit, AT&T's counsel represented that the language of the TSA form tracks Section 2.1.8 and that a transferor could only satisfy the tariff by using AT&T's own form or an identical writing. Id. at Ex. J.

In addition, the FCC ruling has already clearly stated that shortfall obligations do not transfer on traffic transfers without the plan:

> If AT&T had moved the traffic from CCI to PSE, then all of the traffic that CCI had used to meet its CSTP II/RVPP commitments would be associated with PSE's CT 516. Further, CCI (as well as the Inga companies) but not PSE, would continue to have been responsible for any shortfall obligations under the CSTP II/RVPP plans. Once all of its traffic was moved to PSE, CCI might have needed to amass new traffic in order to meet its commitments under its CSTP II plans. AT&T's apparent speculation that CCI would fail to meet these commitments and would be judgment-proof did not justify its refusal to transfer the traffic in question.[4]

Id. at Ex. G, pp. 8-9.

Thus, the question of which obligations are assumed on traffic transfers without the plan has already been answered by the FCC and there is no reason to return to the FCC for a ruling on this non-issue.

Further, AT&T's stilted tariff interpretation that all shortfall and termination obligations are to be assumed on traffic transfers without the plan is totally contrary to the thousands of these types of transfers done by AT&T customers in the marketplace. Under AT&T's tariff interpretation, any aggregator or regular AT&T customer could simply transfer just a few accounts from their CSTPII/RVPP plan that had many thousands of accounts on it, and under AT&T's theory transfer away with just a few accounts, millions of dollars of shortfall and termination obligations. The remaining CSTPII/RVPP plan with the thousands of accounts on it would have no obligations left under AT&T's nonsensical interpretation.

[4] Judge Politan similarly found that plaintiffs' plans were immune from shortfall and termination obligations. Judge Politan keenly observed: "Commitments and shortfalls are little more than illusory concepts in the reseller industry – concepts which constantly undergo renegotiation and restructuring. The only 'tangible' concern at this juncture is the service AT&T provides. This Court is satisfied that such services and their costs are protected." Id. at Ex. D, p. 19. Thus, Judge Politan correctly recognized that these obligations are nothing more than "monopoly money."

AT&T's implausible interpretation is even more ludicrous in this instance. As previously noted, CCI intended to transfer its accounts to PSE and then transfer them back once it acquired its own tariff. Under AT&T's interpretation, all shortfall and termination obligations would follow. Thus, CCI would assume both its own obligations as well as PSE's original obligations under CT516, leaving PSE with no obligations whatsoever!

There is another commonsense way to view the distinction between the various obligations. Bad debt i.e. indebtedness is an account obligation that moves with the traffic. Therefore, it attaches to the account traffic that produced the bad debt. Under the tariff the bad debt would be deducted from the RVPP credits on PSE's CT516 plan because that is where the accounts are located.

In contrast, shortfall and termination are CSTPII/RVPP plan obligations which attach to the CSTPIIRVPP plan's volume commitments which remain as obligations of plaintiffs under the transfer. Simply speaking shortfall or termination penalties are calculated on the plans volume commitment. Since the plans were not being transferred, the alleged shortfall and termination obligations do not transfer to PSE. Moreover, unlike account obligations, shortfall and termination penalties are imposed for unrendered services and, thus, constitute a 100% windfall to AT&T.

Additional evidence exists to show that the shortfall and termination obligations remained with plaintiffs' and CCI's plans. In November, 1995, 11 months after the requested transfer, AT&T amended Section 2.1.8 to **add express language concerning the assumption of shortfall and termination obligations**. The amendment applied prospectively only. Thus, shortfall and termination obligations were **not** obligations that had to be assumed by PSE,

because the transfer was requested 11 months prior to the prospective change made by AT&T under Section 2.1.8. Indeed, the revised tariff expressly states:

> The requirement that the transfer or assignment be made using the standard AT&T Transfer of Service form shall apply to transfer or assignment requests made on or after November 9th, 1995.

Id. at Ex. K.

Thus, AT&T's own language makes clear that PSE was not required to assume shortfall and termination obligations. AT&T's claim that it was being defrauded of shortfall and termination is a bogus claim because it was not entitled to these obligations in the first place. Judge Politan was correct when he observed that the CSTPII/RVPP plans were immune from shortfall and termination because they were ordered prior to June 17, 1994 and, thus, grandfathered for life in the marketplace. The FCC has concurred:

> **Prior to June 17, 1994**, the Inga Companies completed and signed AT&T's "Network Services Commitment Forms for WATS under AT&T's Customer Specific Term Plan II (CSTPII) tariffed plan, which offered volume discounts off AT&T's regular tariffed rates.

Id., at Ex. G, p. 2 (emphasis added). There is no reason for the FCC to have noted that CSPTII/RVPP plans were ordered prior to June 17, 1994 other than to confirm that they were immune from shortfall and termination obligations.

Moreover, even if the CSTPII/RVPP plans were not immune from shortfall and termination charges, AT&T has already been compensated for these charges when it exchanged the alleged shortfall and termination charges for CCI's aid in helping AT&T defend itself against plaintiffs' lawsuit. Assessing these charges now against plaintiffs constitutes double billing and would constitute violations of Sections 201 (unreasonable practice), 202 (undue discrimination), and 203 (not consistent with tariff) of the Communications Act.

Put simply, AT&T's attempt to read additional obligations into Section 2.1.8 must be rejected. Judge Politan, in originally granting the preliminary injunction said it best:

> Plaintiffs cannot be held to construe the section governing transfers under the tariff as meaning that which it does not. Words mean what they say. Rules should not be changed in the middle of the game; and certainly without notice.

Id. at Ex. C, p. 21.

Lastly, the transfer of traffic without the plan is also addressed by Section 3.3.1Q of AT&T's tariff, which assesses a $50.00 per location charge to move traffic from one plan to another. Section 2.1.8 references these record change charges in Section 3.[5] Incredibly, AT&T has successfully turned a routine traffic transfer case into a drawn-out 10 year legal battle.

Finally, AT&T has argued that the D.C. Circuit failed to address AT&T's claim that the anti-fraud provisions of the tariff independently justified denial of the proposed transfer on grounds that the FCC's Order had not been addressed. Hence, AT&T asserts that it is an open issue requiring additional interpretation. Once again, AT&T is wrong. The FCC already decided this issue and rejected AT&T's argument. In section 2 of its ruling, the FCC clearly ruled that to the extent the proposed "location-only transfer" violated the fraudulent use provisions of Section 2.2.4 of its tariff, its remedy was not to refuse to accept the transfer from CCI to PSE. Its sole remedy was to "temporarily suspend service," which it did not do. Id. at Ex. G, pp. 9-10. Therefore, this defense already was rejected by the FCC and a "do-over" is not necessary.

[5] AT&T also tariffed a promotion that waived the $50.00 fee per account for the first 500 accounts moved per plan. Because the aggregators had nine plans, they were entitled to 4,500 free account transfers before having to pay for transfers.

CONCLUSION

Put simply, the sole issue concerning the applicability of Section 2.1.8 has already been decided by the D.C. Court of Appeals. Further, any remaining issues already have been addressed by the FCC and no proceedings are presently pending there. Accordingly, all proceedings before the FCC have been "concluded" and the stay should be lifted. After 10 long years, plaintiffs are entitled to proceed with their claims in this forum.

Respectfully submitted,

ARLEO & DONOHUE, L.L.C.
Attorneys for Plaintiffs, Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc.

By: _____
Frank P. Arleo (FPA-0801)

Dated: May 31, 2005

Exhibit 30

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

COMBINED COMPANIES, INC., a Florida corporation, and WINBACK & CONSERVE PROGRAM, INC., ONE STOP FINANCIAL, INC., GROUP DISCOUNTS, INC. and 800 DISCOUNTS, INC., New Jersey corporations, Plaintiffs, v. AT&T Corp., a New York corporation. Defendant.	Civil Action No. 95-908 (WGB)

BRIEF IN SUPPORT OF MOTION FOR RE-ARGUMENT, PURSUANT TO LOCAL RULE 7.1(g)

ARLEO & DONOHUE, L.L.C.
622 Eagle Rock Avenue
Penn Federal Building
West Orange, New Jersey 07052
(973) 736-8660 Fax (973) 736-1712
(FPA 0801)
Attorneys for Plaintiffs, Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc.

On the Brief:
Frank P. Arleo, Esq.

PRELIMINARY STATEMENT

On behalf of plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. ("the Inga plaintiffs"), we respectfully submit this brief in support of the Inga plaintiffs' motion for re-argument, pursuant to Local Rule 7.1(g).

This matter concerns the interpretation of AT&T Tariff 2.1.8. Over 10 years ago, AT&T refused to approve the partial transfer of traffic from Plaintiffs' plans, arguing that 2.1.8 did not permit partial traffic transfers. After winding its way through the New Jersey Federal courts and the FCC, the D.C. Circuit Court of Appeals ruled that 2.1.8 permits partial traffic transfers. Thus, the D.C. Circuit conclusively decided the sole question referred by the Third Circuit to the FCC.

AT&T asserts that the primary jurisdictional referral that originated in this District Court was not limited to determine if 2.1.8 permitted traffic transfers; but whether such transfers could be permitted given the size of the traffic transfer. The point is that the District Court fully understood based on substantial briefs and a two-day hearing "which obligations" transferred. This District Court understood in 1995 that S&T obligations do not transfer on traffic transfers.

Due to AT&T's illegal remedy, the size of the transfer is no longer an issue. The only issue is "which obligations" transfer and that this issue, the FCC, AT&T and plaintiffs all agree.

Because the D.C. Circuit decided the issue referred by the Third Circuit, the Inga plaintiffs moved to lift the stay imposed by this Court in 1995. By Opinion and Order dated May 31, 2006, this Court declined to lift the stay. In denying the Inga plaintiffs' motion, this Court held that the FCC must determine precisely which obligations under 2.1.8 accompany partial traffic transfers.

New evidence submitted in this motion for re-argument demonstrates that plaintiffs, AT&T and the FCC all agree that 2.1.8 permits a partial traffic transfer without the transferring of S&T obligations; which is the sole question that the DC Circuit had. However, AT&T continues to assert that since plaintiffs transferred more accounts than AT&T wanted plaintiffs to, AT&T unlawfully blocked the transfer, mandating it be classified as a plan transfer.

Additionally, this Court has not seen a detailed analysis by the FCC that it interpreted the obligations issue in its brief filed with the D.C. Circuit Court of Appeals. Further, because the FCC is judicially estopped from taking a contrary position, there is no need to return to the FCC

Additionally, new clear evidence exists to demonstrate that AT&T knows that plaintiffs were not mandated to transfer its S&T obligations in Jan 1995; in essence doing a plan transfer. Thus, this Court should grant plaintiff's motion for re-argument, or alternatively, lift the previously imposed stay.

POINT ONE

THIS COURT SHOULD GRANT THE INGA PLAINTIFFS' MOTION FOR RE-ARGUMENT

The Local Rules in this District expressly provide for such motions. Local Rule 7.1(g):

> A motion for re-argument shall be served and filed within 10 days after the entry of the order or judgment on the original motion by the Judge or Magistrate Judge. This shall be served with the notice or brief setting forth concisely the matters of controlling decision which counsel believes the Judge or Magistrate Judge has overlooked. No oral argument shall be heard unless the Judge or Magistrate Judge grants the motion and specifically directs that the matter shall be re-argued orally.

Id.

Motions brought under the rule are almost invariably referred to as motions for "reconsideration" rather than "re-argument". See, e.g., Hernandez v. Beeler, 129 F. Supp. 2d

Exhibit 31

extent we're opposed to transfer all these obligations under 2.18. AT&T has allowed thousands of other transfers to go through where they didn't require that. That's a form of discrimination under Section 203.

The FCC says, we're not going to resolve discrimination claims here because A: We don't need to; B, it's inefficient because termination is a fact question and you can litigate those fact questions.

THE COURT: Let's assume it goes back to the agency and it agrees with your position. Still going to have this issue of discrimination in this Court. Right?

MR. GUERRA: You would, your Honor. I believe you would.

THE COURT: So we would then --

MR. GUERRA: I can't say how the FCC interprets the tariff. If the FCC were to say --

THE COURT: Trying to see what we can do.

This case has taken on a life like John Does v. John Does.

MR. GUERRA: The FCC is going to consider -- the FCC -- the case had been moving so I don't think we're talking about another seven year run before the agency.

THE COURT: How long will it take for them to resolve it?

MR. GUERRA: I couldn't predict, your Honor. I'd just

Exhibit 32

ARLEO & DONOHUE, L.L.C.
ATTORNEYS AT LAW

Frank P. Arleo
Timothy M. Donohue

Of Counsel:
Jo Ann K. Dobransky
Dawn M. Donohue

622 Eagle Rock Avenue
Penn Federal Building
West Orange, NJ 07052
Telephone: (973) 736-8660
Fax: (973) 736-1712

May 31, 2007

Via Electronic Filing
Honorable Susan D. Wigenton, U.S.M.J.
United States District Court
M.L. King, Jr. Federal Bldg. & Courthouse
Room 2037
50 Walnut Street
Newark, New Jersey 07102

Re: Combined Companies, Inc., et al. v. AT&T
Civil Action No. 95-908

Dear Judge Wigenton:

As Your Honor is aware, this law firm represents plaintiffs Winback & Conserve Program, Inc., One Stop Financial, Inc., Group Discounts, Inc. and 800 Discounts, Inc. (the "Inga plaintiffs"). This matter originally came before Your Honor as a result of defendant AT&T's application for an Order prohibiting Mr. Inga from directly contacting his business liason at AT&T. That issue has now been resolved.

However, in response to AT&T's initial application, we submitted a letter requesting additional clarification and relief regarding Judge Bassler's primary jurisdiction referral to the FCC, which due to its language, was not clear as to the scope of his referral. Judge Bassler's Order states in pertinent part:

> It is further ordered that plaintiffs, no later than August 1, 2006, file an appropriate proceeding under Part I of the FCC's rules to initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under Section 2.1.8 of Tariff No. 2 **as well as any other issues left open** by the D.C. Circuit's Opinion in AT&T Corp. v. Federal Communications Commission, 394 F.3d 933 (D.C. Cir. 2005).[1] (exhibit A)

[1] The August 1, 2006 date was extended to Oct.1st 2006 by subsequent order of Judge Bassler.

There are three issues that need to be resolved:

(A) The January 1995 "traffic only" transfer issue regarding precisely which obligations transfer.

(B) The permissibility or lack thereof of AT&T having placed shortfall charges on plaintiffs' end users in June of 1996, and

(C) Discrimination issues concerning AT&T's failure to provide plaintiffs with access to certain deeper discounted contracts as well as allowing "traffic only" transfers for others but not for plaintiffs.

AT&T and plaintiffs agree that the "traffic only" transfer issue is before the FCC. It is issues (B) and (C) above that are at issue. Due to the general language of Judge Bassler's referral all issues have been extensively briefed at the FCC. It is clear that Judge Bassler wanted all issues resolved by the FCC. Indeed, there would be no logical reason to state "**as well as any other issues**" if the "traffic only" transfer issue was the only issue Judge Bassler wanted resolved.

Unfortunately, the FCC views Judge Bassler's referral as only encompassing the "traffic only" transfer issue because issues (B) and (C) above were not expressly mentioned by Judge Bassler in his referral. However, this does not necessarily mean that the FCC will not adjudicate the shortfall permissibility issue and/or the discrimination issues. Even though the FCC has taken the position that Judge Bassler's referral did not encompass all issues, plaintiffs still had the right to ask for Declaratory Rulings from the FCC, which it did. Additionally, the IRS also asked for the shortfall issues to be resolved in April, which cleared up the confusion that AT&T reported that emanated from an earlier IRS referral in March.

However, the FCC will only issue Declaratory Rulings when there are no disputed facts. AT&T has now taken the position at the FCC that there are disputed facts regarding the shortfall and discrimination issues, but has presented no disputed facts. Curiously, AT&T asserted in its June 15, 2005 brief to Judge Bassler and during oral argument in May of 1996 that there were no disputed facts – only FCC interpretive issues to prevent the lifting of the stay so as to have the case sent to the FCC. AT&T changed its position when the case was referred to the FCC so the FCC would not rule. We assert that AT&T loses whether the shortfall is declared permissible or not and, therefore, it does not want the FCC to rule at all. After over ten years, AT&T continues to attempt to stall.

The District Court can specifically refer these additional two issues to the FCC to ensure that all issues are decided without lifting the stay. First, this Court must address AT&T's alleged

disputed facts on the shortfall issue and the discrimination issues, to ensure the FCC that there are no disputed facts allowing the FCC to rule. If the additional evidence presented is persuasive enough, this Court can lift the stay and issue an Order against AT&T and that is what plaintiffs believe this Court will find. AT&T's FCC briefs and new evidence make numerous concessions regarding all these issues which plaintiffs would like to address with the Court that will resolve for the Court the shortfall issues without needing FCC guidance. It is that clear.

We also assert that there was also a very clear mistake made by Judge Bassler when interpreting the FCC's 2003 Opinion, that if not made by Judge Bassler, would have explicitly answered his referral question regarding which obligations transfer. Once plaintiffs point out the error, we believe it will be obvious to the Court that the FCC has already decided the "traffic only" transfer issue regarding precisely which obligations are transferred. Stated differently, the FCC has already interpreted the obligations issue and, based upon the law of the case, neither the FCC nor the DC Circuit can change its position based upon the same set of facts.

Accordingly, plaintiffs are seeking this Court's intervention and, due to substantial new evidence, would like to set up a briefing schedule with this Court to move for summary judgment on all these issues. Alternatively, at the very least, we request that this Court resolve the alleged disputed facts and issue another primary jurisdiction referral to ensure that the FCC addresses the shortfall issues and the discrimination issues.

Kindly advise regarding a briefing schedule.

Respectfully,

ARLEO & DONOHUE, L.L.C.

By: Frank P. Arleo

FPA:hm
cc: Richard Brown, Esq.
Alfonse G. Inga